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Remarks

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Executive Secretary

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

August 5, 1987

Executive Registry

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MEMORANDUM FOR MR. DONALD GREGG
Assistant to the Vice President
for National Security Affairs

MR. MELVYN LEVITSKY
Executive Secretary
Department of State

COLONEL WILLIAM M. MATZ, JR.
Executive Secretary
Department of Defense

MR. JOHN N. RICHARDSON
Assistant to the Attorney General
and Chief of Staff
Department of Justice

MS. NANCY REINHARD
Confidential Assistant to the Acting
Secretary
Department of Commerce

Executive Secretary
Central Intelligence Agency

RADM JOSEPH C. STRASSER
Office of the Chairman
Joint Chiefs of Staff

SUBJECT: PRG on Options for Additional Trade Controls
on Iran, August 6, 1987, 4:00 p.m. - 5:00 p.m.,
Situation Room (S)

A PRG meeting is scheduled for August 6, 1987 4:00p.m.-5:00p.m.,
in the White House Situation Room, West Wing. The agenda for
the meeting and background papers from the Department of State
and Defense are attached. (S)


Grant S. Green, Jr.
Executive Secretary

Attachments
Tab A

Agenda and Background Paper

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POLICY REVIEW GROUP MEETING
Thursday, August 6, 1987
White House Situation Room
4:00 p.m. - 5:00 p.m.

FOREIGN POLICY EXPORT CONTROLS ON US GOODS TO IRAN

- | | | |
|------|--|-----------------------------|
| I. | Introduction | Colin Powell
(2 minutes) |
| II. | Existing Control Program and Commerce/
State Proposal to Extend Controls on
Additional Items | Commerce
(10 minutes) |
| III. | DOD Proposal for Total Trade Embargo .. | Defense
(5 minutes) |
| IV. | Implications of Options for Algiers
Accords, Legal and Congressional Issues. | State
(5 minutes) |
| V. | Discussion | All
(35 minutes) |
| VI. | Summary | Colin Powell
(3 minutes) |

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STATE PAPERSECRETOPTIONS PAPER: EXPORT CONTROLS ON IRANISSUE FOR DECISION:

Whether to impose additional controls on exports of US goods to Iran.

US POLICY TOWARDS IRAN:

Our longterm goal is to motivate the leadership of Iran to abandon its aggressive posture and adhere to more acceptable standards of international behavior on a wide range of issues, including the war, terrorism, and subversion of its neighbors. This process may eventually lead to more normal diplomatic relations. Just as important is our desire to limit Soviet influence in the country and prevent a Soviet foothold in the Gulf.

Our attempts to carry out these objectives have included diplomatic messages passed to Iran via third parties, efforts at the United Nations and other international organizations to set the stage for a just resolution of the war, a strong program to deny Iran the means to continue the war by blocking arms sales and deliveries from third countries (Operation Staunch) and participation in the Iran-US Claims Tribunal.

CURRENT TRADE WITH IRAN:

The US trade relationship with Iran is limited. After the hostages were taken in 1979, we imposed a total trade embargo and assets freeze, using the International Emergency Economic Powers Act (IEEPA). The embargo was lifted in 1981 as agreed under the Algiers Accords (see below), although we continued to deny munitions list items in light of our neutrality in the war.

In 1984, Iran was designated as a terrorist-supporting country. Thereafter, new foreign policy export controls were imposed on helicopters, aircraft, larger outboard engines, chemical weapon precursors, and national-security controlled products destined for military end-users or end-uses in Iran. (See appendix on current controls.)

US exports to Iran have fallen sharply from previous years and totalled only \$34 million in 1986. Most items requiring export licenses are US items to be incorporated in products produced abroad. In 1986, Commerce validated 88 licenses for \$24 million in national security controlled items (mainly low grade computers, electronic and broadcasting equipment), while rejecting licenses worth \$136 million. These export figures pale beside the dollar value of US imports from Iran: \$612 million in total imports in 1987, of which \$460 million was oil.

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Many license cases involving exports to Iran are subject to sharp and prolonged interagency disagreement, mainly about whether the goods are for a military end-use.

ALGIERS ACCORDS CONSIDERATIONS

The Iran-US Claims Tribunal, which was established by the Algiers Accords when the US hostages were released from Iran, is considering claims of the two governments and their nationals involving billions of dollars. (More than \$4.87 billion has already been paid to US banks from accounts created by the Algiers Accords and more than \$860 million has been awarded by the Tribunal and paid by Iran to other US private claimants. Approximately 2900 US private claimants have claims pending before the Tribunal in a total exceeding \$16 billion; government-to-government claims between the US and Iran exceed \$30 billion.)

The United States has an interest in defending its export controls before the Tribunal. Iran claims that US refusal to allow transfer of Iranian-owned military property violates US obligations under the Accords to revoke trade sanctions in place during the hostage crisis and to transfer to Iran its property subject to pre-1979 applicable US law. A US brief on export controls is due in August and oral argument is scheduled for November. We argue that new controls may be imposed if they are warranted by post-1981 events reasonably related to the controls, and we must be able to justify any new controls on that basis in good faith. If the Tribunal is not persuaded, it might enter a huge damage award against the US, or even order transfer of equipment the US seeks to withhold.

OPTIONS

A. Maintain Current U.S. Export Policy Towards Iran

Authority; implementing requirements: An embargo on munitions list items is in effect, pursuant to the Arms Export Control Act and the Omnibus Diplomatic Security and Anti-Terrorism Act. Export controls on certain dual-use items for military end-uses and users, and controls on aircraft, helicopters and outboard motors are imposed under section 6 of the EAA, and there is a general presumption of denial. Pursuant to that section, they must be renewed and rejustified annually in a report to Congress. The controls were last so justified in January 1987.

Pros

- o Prohibits items that would be of significant military utility to Iran.

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- o Keeps open small export window to civilian economy.
- o No other allies control civilian or dual-use exports to Iran, nor are they likely to do so. Widespread foreign availability of comparable items.
- o US policy to foster image of reliability for US exporters; more controls hurt relationship of US firms with customers in other markets; accelerate tendency to design-out US components (Brown Boveri/Digital).
- o Will not hurt US interests at Hague Tribunal.

Cons

- o May be seen as US failure to respond to continuing Iranian support of international terrorism and actions inimical to the US; as well as intransigence in the war.
- o Permitting such trade may be construed as a lack of seriousness in responding to Iranian behavior.
- o With no USG presence in Tehran, cannot monitor end-use or end user.
- o Iran's economy mobilized to support war effort. Certain dual-use exports ultimately assist war effort.

B: Impose new foreign policy controls on additional items that by their nature could improve the battlefield effectiveness of the Iranian military.*

Authority; implementing requirements: Under section 6(a) of the EAA, the President has the authority to impose controls "to the extent necessary to further significantly the foreign policy of the US." Under section 6(b)(1), the President must make a finding that the additional controls: a) are likely to accomplish their intended purpose, in light of foreign availability; b) are compatible with overall US policy toward Iran; c) are not likely to be rendered ineffective by the reactions of other countries; d) economic costs do not exceed foreign policy benefits; and e) can be enforced effectively. We could argue that controls whose purpose is further distancing US from unacceptable Iranian behavior, and are directed at militarily-useful items, would meet these standards.

Pursuant to section 6 of the EAA, the Secretary of Commerce is required to consult with and submit a report to Congress on the President's findings before imposing new controls. Few in Congress likely to object in public to tightened

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controls on Iran, given Iran's hostility to the US. On the other hand, in export control legislation currently before Congress, those sensitive to competitiveness concerns (Bonker, Heinz and others) may further constrain future Presidential authority to ignore foreign availability. Prior to the issuance of controls, the Secretary of Commerce must also consult with industry to determine their likely economic impact.

Controls are effective upon publication in the Federal Register. Absent an additional Presidential determination that a breach of the peace exists, controls would not affect existing contracts.

Additional Products Proposed to be Controlled

Mobile communications equipment
Boats
Off-highway wheel tractors
Large diesel engines (can be used to power tank transporters)
Non-strategic aircraft parts and components
Scuba and diving equipment

Pros

- o Keeps Iran from obtaining from US items with battlefield or terrorist applications.
- o Reemphasizes US commitment to Operation Staunch, keeps focus on war effort.
- o Easier to justify controls targeted at Iranian war effort.

Cons

- o As unilateral control, unlikely to deny Iran the items, all of which are widely available from foreign sources.
 - o Unlikely to modify Iranian behavior.
 - o Hurts image of reliability for US exporters.
 - o Presents risks to US interests at Hague Tribunal, even though US would point to post-1981 events to justify.
- C. Impose new controls to ban the export to Iran of all national security controlled items, regardless of end-user or end-use.*

Authority: implementing requirements. The President could impose new foreign policy controls on such items using the same procedure outlined under option B above: Presidential

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finding, notify/consult with Congress, effective upon Secretary of Commerce publication of implementing regulations.

Alternatively, the President could use his authority under section 5 of the EAA to add Iran to the list of controlled countries, effectively imposing national security controls on Iran. To do so, he must determine that the exports of goods or technology to Iran would make a significant contribution to its military potential, and that that would prove detrimental to US national security. More stringent foreign availability provisions apply to national security control authority: foreign availability must be assessed subsequent to the imposition of controls, and, since the other COCOM countries do not control dual-use items to Iran, controls imposed could not be maintained beyond 18 months unless foreign availability could be negotiated away.

National security controls on Iran would be the first on a non-communist country, and would blur the distinction between national security controls (where we share common strategic interests with our Allies in COCOM) and unilateral foreign policy controls.

Pros

- o Clear statement that US will not countenance normal trade as long as war continues.
- o Consistent in scope with foreign policy controls imposed on Syria (see appendix on current controls on terrorist countries).
- o Easy to implement - licenses already required for these CCL items.

Cons

- o Presents risks to US interests at Hague Tribunal, even though US would point to post-1981 events to justify.
- o As unilateral control, unlikely to deny Iran the items, many of which are widely available from foreign sources.
- o Would not reach low-tech items with significant military applications (i.e., scuba, off-road vehicles).
- o Hurts competitive position of US exporters and gives foreign manufacturers further impetus to engineer-out US parts and components.

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D. Embargo all exports to Iran except medicines and food.*

Authority: implementing requirements: The foreign policy control authority in EAA is ill-suited to use for total embargo. Legislative history of act shows intent of Congress that this authority not be used for total embargoes. In addition, requirements for prior consultations with Congress and industry make the EAA an unwieldy tool for a total embargo. Best alternative is IEEPA.

IEEPA requires declaration by the President of a national emergency to deal with an "unusual and extraordinary threat" to the national security, foreign policy or economy of the US (State Legal Adviser believes that, while the President may have the discretion to invoke IEEPA without further explanation, he should do so only upon a reasonable basis to support declaring a new national emergency and that no such basis has yet been carefully articulated). The declaration is made by Executive Order; the Secretary of the Treasury issues implementing regulations.

"In every possible instance," the President is required to consult with Congress prior to imposing controls under IEEPA. (The State Legal Adviser believes that consultation should occur in this case if IEEPA is seriously considered.) IEEPA contains no contract sanctity restriction.

Pros

- o Unambiguous statement of US policy regarding Iran, its support of terrorist attacks on US targets, and its failure to settle its war with Iraq.
- o Iran threat to US strategic interests in Gulf region.
- o Consistent with our trade embargo against Libya.
- o Relatively easy to administer; trade loss (\$34 million) negligible in global terms.

Cons

- o Presents substantially greater risks of adverse outcomes in the Hague Tribunal than Options B or C (may appear to Tribunal as reimposition of US trade embargo). In addition, in response to embargo, Iran could fail to replenish security account, out of which awards to US claimants are paid, or even abandon Tribunal. USG then risks being sued by private US claimants (total private claims: \$16 billion, government-to-government claims exceed \$30 billion).

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- o Would be hard pressed to justify embargo while we continue to buy \$460 million in Iranian oil.
- o Would tend to dissipate international support for our multi-pronged policy efforts to end the war, since we would appear viscerally anti-Iranian.
- o Without clear Iranian action to trigger, adds to recent series of events raising level of tension in the Gulf.
- o Damages US exporters by reinforcing impression US unreliable supplier, and dependence on US technology limits trading opportunities.
- o Should hold such a non-military option in reserve for use at more appropriate time.
- o Use of IKEPA would fuel debate on Hill over purported abuse of statute (Heinz-Dixon Bill).

- Under Options B, C, and D, we should include a provision giving us the ability, on a case-by-case basis, to permit exports in compliance with specific Tribunal awards.

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OPTION'S PAPER

DEFENSE PAPER

ON

EXPORT CONTROLS FOR IRAN

ISSUE FOR DECISION:

(C) Whether to impose additional controls on US exports to Iran.

PURPOSE OF PAPER:

a. (C) To discuss current US policy and the rationale for additional export controls for Iran.

b. (C) To present the available options for imposing new controls, discuss the legal basis for such actions, and the economic and political impact of each course of action.

BACKGROUND:

(S) There is sharp disagreement between DoD, State and Commerce Departments over US export policy regarding Iran. DoD continues to object to all exports because of their potential contribution to Iran's terrorist and war efforts. Commerce and State Departments support continued trade in commercial commodities with some exceptions. At the heart of the issue is the adequacy of US export policy towards Iran in supporting national security and foreign policy objectives.

U.S. POLICY TOWARDS IRAN:

a. (S) Foreign Policy. The US maintains a policy of neutrality with respect to the Iran-Iraq war and we have designated Iran as a terrorist-supporting country. Our near-term goal is to motivate Iran to accept a negotiated end to its war with Iraq, reduce or eliminate the threat to US and friendly forces, and restore stability to the region. The long-term goal is to moderate Iranian behavior, stop their support to terrorism, and establish a more positive economic and diplomatic relationship, while continuing to limit Soviet influence in the region.

(S) Initiatives in support of our Iran policy include efforts to deny to Iran the means to continue the war and bring about a settlement by, 1) attempting to block arms sales and deliveries through third countries (Operation Staunch), and 2) efforts in the UN and other forums to obtain multilateral support for measures to bring about an end to the war.

b. (S) Trade Policy. When the hostages were taken in 1979, the US imposed a total trade embargo and a freeze on Iranian assets using the International Emergency Economic Powers Act (IEEPA). The embargo

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was listed in 1981 as part of the Algiers Accords (discussed later). Since that time, Iran has been treated for trade purposes in the same category as other Free World countries with some exceptions. When Iran was designated a terrorist country in 1984, export license review was imposed on a limited number of items such as helicopters, aircraft, larger outboard motors, chemical weapons precursors, and items destined for military end-users or end-use. However, dual-use items (items having both commercial and military utility) have not been generally prohibited for export by Commerce Department unless diversion to Communist countries could be shown. All munitions list items are denied.

ADEQUACY OF CURRENT EXPORT POLICIES:

(S) A comprehensive US policy regarding the sale of strategic goods to Iran has not been addressed in the context of the Iran-Iraq war. Although the US has avowed a policy of neutrality in the war, this policy had not been adequately reflected in our export laws and regulations. The current restrictions on trade result from Iran being designated as a terrorist-supporting nation, not from the impact of US exports on Iran's war efforts.

(S) Currently, decisions to approve or deny licenses are based on subjective assessments as to the "military" significance of the items, with agencies rarely able to agree. In addition, Iran presents a unique problem in that the US has no capability prevent the use of our technology and products from being used to support their terrorist and war efforts.

(S) In pursuing Operation Staunch and initiatives in the UN, the US has lost much credibility with its Allies because of the limited arms shipments to Iran. A visible, well-defined, and consistent trade policy is a critical element in restoring US credibility and leadership, e.g., the US will no longer provide material support of any kind to Iran until it agrees to a negotiated settlement to the war and renounces its terrorist policies.

OPTIONS:

(C) Three options are readily available for imposing additional controls on exports to Iran:

1. (C) Adding items to the current list which require license review under the Export Administration Act (EAA).
2. (C) Adding Iran to the list of controlled countries under the EAA, thereby greatly reducing or banning entirely the export of all national security controlled items.
3. (C) Embargo of all exports to Iran except for medicine and food, using Executive authority under the IEPA.

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OPTION 1 - Controlling Additional Items. Under Section 6 of the EAA, the President has the authority to impose export review of items "to the extent necessary to further significantly the foreign policy of the US", if the President determines that such actions, a) are likely to accomplish their intended purpose, in light of foreign availability; b) are compatible with overall US policy toward the country; c) are not likely to be rendered ineffective by the reactions of other countries; d) do not result in economic costs that exceed the foreign policy benefits; and e) can be enforced effectively. The situation involving Iran makes this determination relatively easy, and we would expect little public or Congressional objection.

(C) One way to implement the option would be to direct an inter-agency study to identify the additional items to be subject to licensing review. The list could range from a few items to hundreds or thousands in the extreme. It would be extremely difficult and time-consuming to achieve interagency consensus on such a list.

(S) An alternative approach which avoids the above problem is for the President to define, in broad terms, the types of items and/or end-users for which exports would be denied. This approach involves two steps; first, the President direct the Secretary of Commerce to deny any license to Iran where the item is, a) destined to an Iranian Government or state-controlled agency, b) controlled for national security reasons, or c) determined to contribute to Iran's capability to continue the war or support terrorist activities. Second, the Secretary of Commerce change the Export Administration Regulation (EAR) to require a validated license for all exports to Iran to bring unlicensed items under review. This approach would serve to ban most exports but would draw much less attention than more visible actions such as an embargo under IEEPA. A change to the EAA would not be required.

(S) OPTION 2 - Addition of Iran to the List of Controlled Countries. The President could use his authority under Section 5 of the EAA to add Iran to the list of controlled countries. To do so, he must determine that the export of goods or technology to Iran would make a significant contribution to its military potential, and that such exports would prove detrimental to US national security.

(S) If this option were used, Iran would be the first non-communist country to which items are controlled for national security purposes. While controls in this category have in the past been closely paralleled COCOM agreements on EastWest trade, U.S. regulations have no such requirement. Thus, adding Iran to the list of controlled countries under the EAA would not require COCOM approval or compliance.

(S) This option is relatively easy to implement, and the items which warrant the most serious attention, national security controlled items, are already defined. Further, it clearly demonstrates that the US is restricting trade on those kinds of items which we are requesting other countries to withhold from Iran. A problem with this option is that under the EAA, controls must be removed unless foreign availability can be negotiated away.

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OPTION 3 - Embargo All Exports Except Food and Medicine.
 The only viable legal basis for implementing this option is the IEEPA. IEEPA requires declaration by the President via an Executive Order of a national emergency to deal with an "unusual and extraordinary threat" to the national security, foreign policy or economy of the US. "In every possible instance," the President is required to consult with Congress prior to imposing controls using the IEEPA.

(S) While there is past precedence for using IEEPA to limit or embargo trade (Nicaragua, South Africa, and Libya), some members of Congress may view its use as an attempt to evade statutorily mandated procedures for using normal export controls. However, since the action involves Iran, this possibility is mitigated. The President's determination that a national emergency exists would be based on Iran's continued military buildup and the serious threat Iran poses to US and friendly shipping and military forces in the Persian Gulf, its continued aggressive action against Iraq and its refusal to negotiate an end to the war, and Iran's terrorist policies and influence in the continued taking and holding of hostages in the Middle East.

IMPACT OF IMPOSING NEW SANCTIONS:

a. (C) Economic. US exports to Iran have fallen sharply in recent years and totalled only \$34 million in 1986. Of this total Commerce validated 88 licenses for \$24 million in national security controlled items while rejecting licenses worth \$136 million. US imports from Iran during 1986 totalled \$612 million, of which \$460 million was oil. Thus, the economic impact of reduced trade with Iran is not significant.

(S) Imposing additional controls on exports to Iran under any of the options would essentially be a unilateral action by the US. Many of the items would still be widely available from foreign sources. To a degree, such actions by the US could provide further impetus to foreign manufacturers to engineer out US parts and components. However, a significant portion of current licenses are for spare parts for US equipment, previously installed in Iran before the revolution, and which are required to maintain and repair old equipment. In these instances, foreign availability is not a major consideration since it would be difficult and, in most cases, expensive for Iran to replace current equipment from non-US sources. In the long term, it is problematical whether such a ban would have any material effect on the ability of US industry to compete for business in Iran should relations improve.

(S) Lastly, increased controls, particularly a total embargo, could adversely affect outstanding US claims before the US-Iran Claims Tribunal. More than \$4.87 billion has been paid to US banks from accounts created by the Algiers Accords, and more than \$860 million has been awarded and paid by the Tribunal to other US claimants. Approximately 2900 US private claimants have claims pending before the Tribunal totaling more than \$16 billion; government-to-government claims between the US and Iran exceed \$30 billion.

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b. (S) Political. Introduction of stricter controls on exports would help to reestablish US credibility regarding trade with Iran, demonstrate our continued opposition to terrorism, and our commitment to stopping the war with Iraq. We would not expect any major public or Congressional opposition for additional controls.

S. Iranian reaction to increased export controls would most likely be closely tied to the level of controls established. Option 1 has the least political visibility and could be accomplished rather quietly. The alternative approach discussed under Option 1 has the additional advantage of restricting most, if not all items of concern, without major fanfare (although any action at this point would receive recognition in the media). Designating Iran as controlled country (Option 2), similar to China and the Bloc Countries, is a more visible and demonstrative action which would certainly not go unnoticed by Iran. A total embargo (Option 3) would receive much attention internationally and would likely provoke Iran into a new round of retributions and threats. In the eyes of some, this could lend credibility to Iran's claim that the US is no longer neutral in the war. However, we should be able to attenuate such criticisms with a carefully articulated policy, and continued even-handedness in our policies towards Iran and Iraq.

(S) The most significant political repercussions may occur in the US-Iran Claims Tribunal. If Option 3 were adopted, Iran would likely claim that new trade sanctions violate the 1981 Algiers Accords, which required the lifting of the trade embargo in effect at the time. Iran could refuse to further honor its commitments under the Tribunal, which could threaten millions in US claims. There is also the possibility that the Tribunal may be sympathetic to the Iran's position and cause the Tribunal to render judgments unfavorable to the US, or order the transfer of remaining equipment the US seeks to withhold.

c. (S) Legal. There are no legal impediments to exercising any of the three options. The primary legal battle would come in protecting US interests in the Claims Tribunal. In the 1981 Algiers Accords, the US agreed to remove the trade embargo placed on Iran following the taking of the hostages. To counter arguments that we are violating that agreement, the US would have to show that the new controls are justified by events occurring since 1981. As previously discussed, with the deteriorating situation in the Persian Gulf involving threats to shipping and friendly nations in the region, Iran's refusal end the war, and their continued support of terrorism, the US is in a good legal position to justify the new sanctions. There is always the risk that the Tribunal will not agree.

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